

United States Court of Appeals

FIFTH CIRCUIT
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April 22, 2009

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No. 07-60748, USA v. Whitfield
USDC No. 3:03-CR-120-2

Dear Counsel and Mr Whitfield:

The panel requests that the parties provide supplemental briefing on the following issues related to counts 11, 12, 13 and 14 alleging violations of 18 U.S.C. § 666.

The court notes that section 666 provides that an agent of a state or local government or agency receiving federal funds as specified in section 666 - here "the Administrative Office of the Courts" of Mississippi - commits an offense if he

"corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded *in connection with any business, transaction, or series of transactions of such organization, government, or agency* involving any thing of value of \$5,000 or more" Section 666(a)(1)(B) (emphasis added).

Section 666 likewise provides that one commits an offense if he

"corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, *in*

connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$5,000 or more." Section 666(a)(2) (emphasis added).

1. What evidence shows that the matter or matters respecting which Judge Whitfield or Judge Teel intended to be influenced or rewarded, were a matter or matters *in connection with any business or transaction of the Administrative Office of the Courts of Mississippi*? Similarly, what evidence shows that anything of value which Minor gave with intent to influence or reward Judge Whitfield or Judge Teel was in respect to any action taken or to be taken *in connection with any business or transaction of the Administrative Office of the Courts of Mississippi*?

2. Describe the nexus that the "in connection with" clause requires between the relevant governmental agency - here the Administrative Office of the Courts of Mississippi - and the particular matter respecting which the "agent" defendant (here Judge Whitfield or Judge Teel) is intended to be influenced or rewarded.

3. What is the proof of such nexus with respect to the convictions under counts 11, 12, 13 and 14?

4. As to each appellant was a lack of such nexus adequately raised below and on appeal? If not adequately so raised, what authority would allow the court to consider the nexus in the present appeal?

5. If the court determines one or more of counts 11, 12, 13 and 14 should be reversed, what effect, if any, would that have on the proper action to be taken on any of the other counts of conviction, and what effect, if any, would that have with respect to whether there should be resentencing on any of the other counts of conviction even if the convictions on those other counts were not to be reversed?

Each party is to provide a brief not to exceed 15 pages, said brief to be filed by May 18, 2009.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

A handwritten signature in cursive script that reads "Cindy M. Broadhead".

By: _____

Cindy M. Broadhead, Deputy Clerk
504-310-7707

Form Name: SPECIAL LETTERHEAD